Appendix A.

Excerpts from Public Utility Holding Company Act of 1935.

Section 11.

(a) It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: Provided, however, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss

of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary com-

panies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection, shall be subject to judicial review as provided in section 24.

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(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commision shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate

the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

Appendix B.

Excerpts From Federal Trade Commission Report On Public Utility Holding Companies.

Public Utility Holding Companies Compared With Other Businesses.

It was recognized by the Federal Trade Commission that many attributes of the public utility holding company, whether good or ill, are common characteristics of business generally, both within and without the utility field.

> "In this connection it is important to note that some of the matters referred to here are not peculiar to utility holding companies but may be found also among other types of commercial corporations. It is, likewise, important to note that some of them—whether advantages or detriments—are not necessarily inherent conditions, but depend upon the circumstances and methods of organization or on the personal characteristics and motives of the individuals who are in control of the management. It should also be noted that utility holding companies are concerned with businesses of a semimonopolistic character and may be considered as not subject to the same degree of restraint through competition as corporations engaged in wholly competitive businesses." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 831.

Economic Need for Holding Companies.

It is expressly recognized that the organization of holding companies was called for by a pressing economic need and was at least not inconsistent with sound social theory.

> "The basis for holding companies in the electric and gas utility fields lies, on the one hand, in certain economic needs of small operating companies for

financial, engineering, and managerial services and, on the other hand, in the personal ambitions of the individuals who form the holding companies. The distinction between these service functions and the personal motives, or practices, of the organizers should not be lost sight of. The two are not necessarily antagonistic. If the promotion of the organizers' purposes is accomplished only through straightforward performance of these service functions, such promotion may be in accord with the theory underlying the general industrial organization on the basis of private ownership and private intiative for profit." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 118.

That the holding company solved the important problems which called it into existence is recognized.

"With the realization of the possibilities of long distance transmission, connection between various adjacent systems and wide-spread distribution, as well as the acceptance of purchased power by large industry and the development of use for heating purposes following lighting and power, the holding company idea became active. To acquire sufficient existing plants, to reach apparently desirable locations for sale of electric energy and to construct the economical new plants and necessary transmission lines required the command of large financial resources as well as a unity in direction and control of property which was not possible, due to existing laws, through the direct ownership by one corporation of operating properties in many communities and especially in several States. The holding company solved these problems. To realize the possibilities, as visualized, required the construction of much new property, the retirement to reserve status, or abandonment, of much older property and increases in net earnings both by enlarging the total

revenues and reducing operating expenditures." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 776.

Physical Integrations Under the Holding Company.

The desirability of physical integrations of public utility properties was one of the compelling reasons for the development of the public utility holding company.

"This subject must also be viewed from an historical angle. The electric and gas utility development has had a phase of free-lance pioneering in which rapid development was facilitated, though marred by many greedy profit-seeking methods. The holding company, especially in view of laws in many States, was often the readiest means of bringing together many unconnected operations lying in different States (and also, indeed, within a single State) into one connected unit of operation. Such a grouping of adjacent communities connected by means of transmission lines made it possible in many cases to construct more efficient central stations of large capacity and thus to reduce the costs of generating electricity or to utilize combinations of steam and hydro generating plants in a more economical manner, sometimes in part to the advantage of various classes of consumers in the reduction of rate schedules. A development similar in many respects occurred to a certain extent in natural gas which generally required the building of interstate transmission pipe lines and the acquisition of reliable outlets for such gas through an interest in (or long-term contracts with) local utilities in the areas served." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 832-833.

"The large systems of electric and gas companies which have been built up under holding company control have resulted principally from the continuous purchases of independent operating companies by

holding companies. As a foothold was gained by a holding company in some locality, control of other operating companies nearby generally was obtained which led in time to the control by the holding company of a number of operating companies in the same territory. The control of such a number of companies in a given area naturally resulted in their unification in the course of time; large successor companies resulted from this unification and from the construction work involved, particularly in the erection of large central electric stations in place of the more or less obsolete plants which came under the control of the holding company." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 179-180.

These integrations are recognized to have been carried out in a highly efficient manner.

"This centralization of companies has resulted generally in economy of operation in the production and distribution of electrical energy by eliminating duplicate generating and transmission facilities and the scrapping of obsolete facilities, with a consequent savings in capital expenditures and the accompanying operating costs, together with the greater utilization of waste power and potential power." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 250.

"Occasionally small and unprogressive communities may be found in which old distribution equipment has been left in place with indifferent maintenance when under the control of a holding company. But in general, the holding-company systems appear to have been prompt in revamping or completely rebuilding distribution systems acquired in mediocre condition. The possibilities of positive danger to the public as well as interruptions to service resulting from poor transmission and distribution lines, have tended to make managements give due attention to maintenance as well as to construction. High-class construction

as regards sturdiness has been looked upon as a definite means of keeping down maintenance costs and therefore improving net earnings until near the end of the useful life of the equipment." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 700.

Centralized Services Rendered by Holding Companies.

That centralized servicing presents distinct advantages which are present under holding company control and not otherwise, has been recognized by the Federal Trade Commission.

"Centralized servicing undertakes to furnish to one or more public utilities by means of one central organization certain services, as for example, management in any of its several forms, purchasing, financing, construction engineering, etc. As already pointed out, such a servicing organization may or may not be affiliated with the companies serviced. Centralized servicing, therefore, is not something peculiar to the industrial consolidation, although, as a matter of fact, independent servicing is increasingly of less importance than that furnished by an organization to its affiliates.

"There are several reasons suggested for this:

"(1) It is difficult for the owner to delegate to another, or for the other, a non-owner, to assume full executive responsibility when the risks of ownership and operation so largely remain with the owner, as they do under the service contract and fee system of management. Only the risk-bearing owner is in a position to formulate large policies or make quick and far-reaching decisions. The contract must necessarily prescribe, at least by implication, the limits of initiative and action which the 'manager' may exercise. Within these limits, only management of a routine nature will function, except as the two parties

to the contract are identified in interests as is true in the case of consolidation.

"(2) There are apparently not the same opportunities to secure low-cost capital through a servicing organization, related to the client company solely by a service contract, as there are through a servicing organization affiliated by ownership with a large group, of which the serviced company is also a member." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 613.

"In the well-managed servicing groups the advantages in servicing due to the large volume of work and the great irregularity of occasions which required services combined with the advantages of salaries instead of fees for capable technicians, and the continuing intimate knowledge of operating-company conditions and requirements gained by a body of experts long associated therewith, have enabled that work to be cheaply and advantageously done." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 839.

Financial Services Rendered by Holding Companies.

The Federal Trade Commission gave emphatic recognition to the fact that capital needs of utilities have presented difficult problems, which have, in turn, constituted one of the impelling forces leading to the growth of holding companies.

"Obtaining capital for new enterprises and extensions and betterments of existing small central stations in the amounts desired for their extremely rapid growth has generally been difficult. From the outset local managements generally have found it necessary to go to the great financial centers where, in some cases, they and their projects were not sufficiently well known to obtain the capital needed on the most favorable terms." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 46, 166.

"Efficient public-utility service depends upon large and relatively permanent investments. The gross annual revenues are rarely, if ever, more than one-half the legitimate fixed-capital investment and frequently hardly equal one-fourth. The two necessities of command of capital for permanent investment and wisdom in the choice and arrangements of the facilities required demand for maximum success unusually large capital resources and technical skill." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 834.

"Furnishing of this common-stock capital would seem normally to be the function of the local capitalists. But as such capital is not always available, the holding company has found an opportunity to acquire the control of the company and has furnished a part of the common-stock funds, reimbursing itself by selling its own securities to the public." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 122.

It is not surprising, therefore, that financing is almost invariably named among the principal holding company advantages. In a summary of holding company advantages by the Federal Trade Commsision, the first one was:

"Better financing whereby money for improvements and expansions sometimes has been obtained at lower annual costs and easier terms, due to the broader field of operation and the larger volume of financing resulting from combining the capital requirements of a number of corporations." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 838.

Another summary of holding company advantages by the same Commission commences:

"Funds were obtained from investors which promoted more rapid extension and improvement for

small or undeveloped operating utilities than would have in many cases been possible as independent units." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 881.

Technical, Management and Engineering Services by Holding Companies.

The employment by holding companies of a high grade of experts for management and technical services has been clearly recognized as an advantage.

> "The chief advantages possible to operating companies, and thereby to the public through holding-company control and management, are the development of connected operations, the employment of larger and more efficient production plants with lower costs of production and larger volume of business, and the employment of more expert management for technical and business direction to reduce other costs and expenses." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 834.

The second advantage of holding companies mentioned by the Federal Trade Commission in a summary of such advantages was the following:

> "Technical and managerial experts employed by some holding-company groups for construction, operation, planning, legal, and other functions. Their compensation, if on a fee basis for services rendered intermittently to numerous moderate and small-size organizations, needed to be large enough for expenses, unutilized time, prospecting for engagements, etc. Employed for a large group of operating companies, time could be more fully and gainfully occupied at less actual cost per project handled. The local managements could often benefit from the plans and advice of high-grade supervisors." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 838.

In another summary of holding company advantages, the Commission named as the second and third the following:

> "• • • (2) combinations were hastened of smaller utility operations into one or more much larger organizations, which made possible the advantages of physical connection, large-scale production, and unified management; (3) skilled management and expert engineering were concentrated on the problems of plant construction, and of production, transmission, distribution, and utilization of electric energy • • •." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 881.

The Federal Trade Commission expressed high praise for the quality of the technical and engineering achievements of holding company service organizations.

> "Engineers were encouraged by the better holding companies to construct and reconstruct splendid power stations, transmission lines, substations, and distribution systems with the object of gathering and properly caring for high volumes of business at the lowest possible operating costs, on the assumption that sooner or later the added capital outlays would earn a larger profit." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 776.
>
> "Field inspections by Commission examiners have shown a character of design and construction under holding company staffs that almost invariably appeared efficient, durable and unextravagant. The most elaborate, and therefore relatively more expensive, constructions observed have been those authorized by independent companies and designed by nonaffiliated consulting engineers. The older Niagara Falls Power plants, the Chelan plant of the Washington Water Power Co., the Edgar plant of The Edison Electric Illuminating Co. of Boston, and the South Meadow plant of the Hartford Electric Light

Co. are examples of the latter. The work of the servicing and supervision staffs of several of the important holding company groups, according to the record, appears to have been efficiently and economically planned and accomplished, and a high order of progressive engineering appears to have been demonstrated therein. Whether the full measure of economies obtained was reflected in the operating company property records is another matter, depending upon the policies of the holding company managements. Neither is it to be inferred that such servicing organizations made no mistakes in planning for developments, in providing facilities or in establishing policies." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 839.

Holding Companies Afford Advantageous Facilities for Centralized Purchases.

Among holding company economies mentioned by the Federal Trade Commission is the following:

"Centralized purchasing of a great variety of standardized appliances permits the pooling of such purchases for the entire group, with the maximum 'quantity discounts' obtainable for such resulting volume under holding company or large operating company contracts with the manufacturers; and where the holding company passes all of these quantity discounts on to the operating companies, such centralized purchasing benefits them and potentially the consuming public. Centralized purchasing of other materials and equipment also possibly obtains somewhat lower prices than would be obtained under decentralized purchasing, but the amount of such benefit cannot be measured. Centralization of the placement of insurance and the handling of claims in the hands of a specialist makes possible lower premiums and more favorable settlement of damage claims." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 125-126.

Again, in listing a summary of holding company advantages the Commission included the following:

> "Better terms and conditions for purchase of equipment and supplies through large volume sometimes resulting from consolidating requirements of numerous operating companies and because of especially qualified and experienced buyers." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 838.

Holding Company Management Makes Possible Rate Reductions and Extensions of Service to Sparsely Populated Areas.

A recognition that utility rates have been reduced and that holding companies have at least made possible such reductions is contained in the following quotation from the Federal Trade Commission Report:

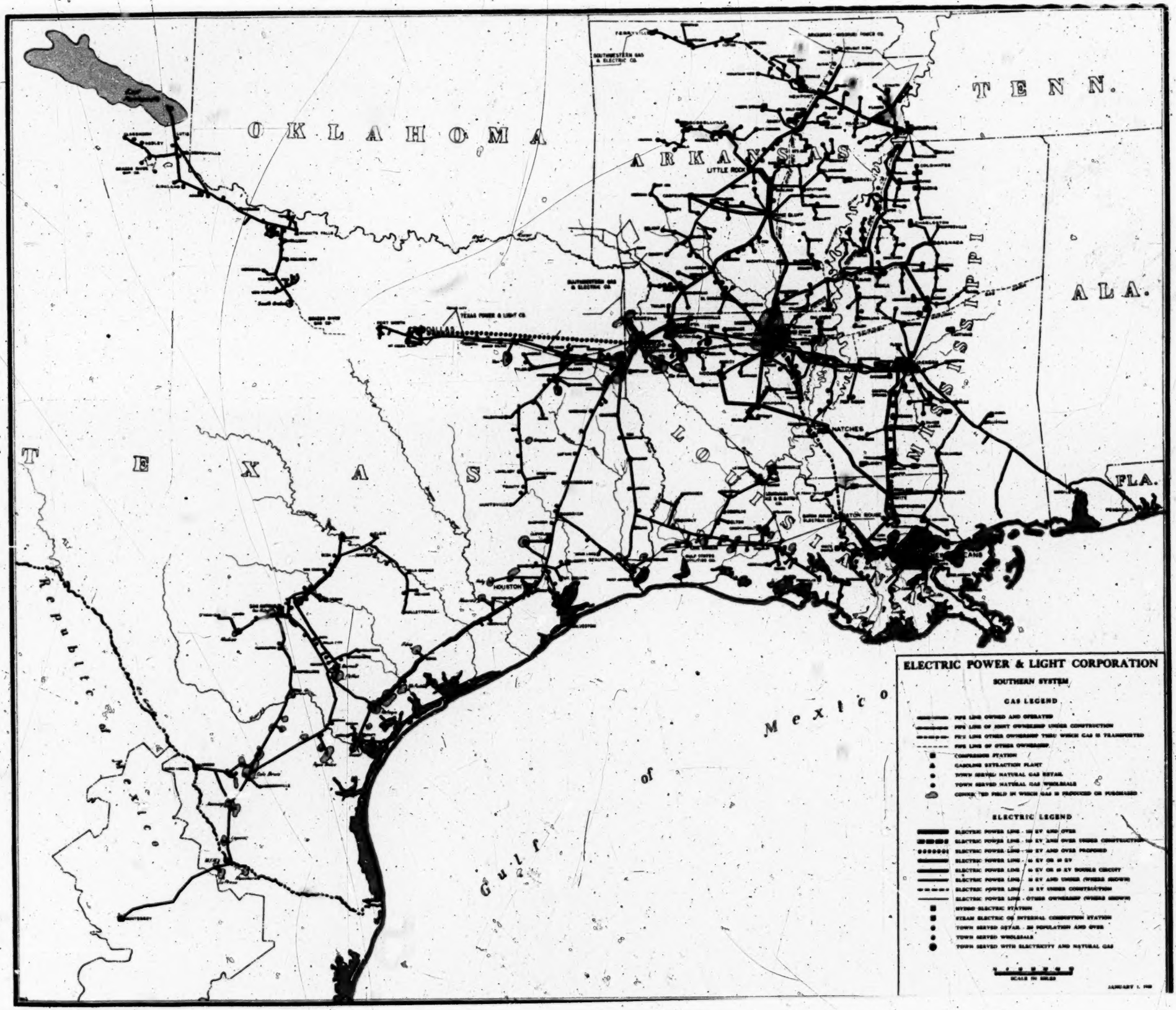
> "There has been a general decline (except for a period of about 4 years following the war) in electric rates, not only during the last 30 years, but also during the last decade. What part the holding companies can justly claim in this decline in rates of service it is impossible for anyone to determine, one reason being that certain practices of holding companies have tended to keep rates up. Improvements in the art would have brought about a general decline in any case, but apparently the holding companies hastened in many instances the introduction of more modern and efficient generating equipment and facilities for transmission by bringing together many independent and unconnected utility operations." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 833.

The tendency toward rate reductions is also recognized in the following statement which constituted one of several advantages of holding companies as summarized by the Federal Trade Commission:

"• • • service was improved and extended, consumption increased, and costs of production were reduced, with a consequent possibility of, and tendency toward, lower rates, notwithstanding accompanying financial practices which had an opposite tendency as to rates; it was to the interest of the holding company to lower costs as a means of increasing its profit." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 881.

That many areas, particularly backward ones, owe their present efficient electric service to holding companies was found to be the fact.

"The record shows vast gains in extended and enlarged service, improvements in facilities, reductions in costs, and reduction in rates under holding-company control in numerous areas previously served inadequately or not at all." Rep. F. T. C., 70th Cong., 1st Sess., Sen. Doc. 92, Part 72-A, 841.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